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**NOTICE OF MOTION AND RELIEF SOUGHT**

Please take notice that, on May 4, 2004 at 9:30 a.m., before the Honorable Martin J. Jenkins in Courtroom 11, 19th Floor, in the United States District Court, 450 Golden Gate Avenue, San Francisco, California, Defendants Aeroflex, Inc., AMI Semiconductor Inc., Matrox Electronic Systems, Ltd., Matrox Graphics Inc., Matrox International Corp., and Matrox Tech, Inc. (collectively "Defendants") will each seek an Order from this Court:

- 1) striking plaintiff Ricoh Company Ltd.'s ("Rico") Disclosure of Asserted Claims and Preliminary Infringement Contentions ("Infringement Contentions"), served on March 12, 2004 allegedly pursuant to Patent Local Rule 3-1;
- 2) requiring Ricoh to make the showing of good cause required under Patent L.R. 3-7 for any amendments and/or modifications that the Court orders are required for remedying the inadequacies identified by Defendants and/or otherwise deemed by the Court as necessary for complying with Patent L.R. 3-1;
- 3) if good cause is shown, requiring, within 10 days of this Court's order, Ricoh to file Amended Infringement Contentions that remedy the inadequacies identified by Defendants so that they comply with the requirements of Patent L.R. 3-1;
- 4) staying Ricoh's discovery from the Defendants until Ricoh files Amended Infringement Contentions that comply with the Court's Patent Local Rules.

In the event that Ricoh does not or cannot make the required showing of good cause necessary for amending its Infringement Contentions, the Defendants further request that the Court order that Ricoh be precluded from: 1) pursuing its infringement claims against any Accused Instrumentalities as to which Ricoh failed to comply with Patent L.R. 3-1 in its original Infringement Contentions served on March 5, 2004; 2) relying on any other instrumentalities for any purpose in this litigation for which Ricoh failed to comply with Patent L.R. 3-1 in its original Infringement Contentions served on March 5, 2004; and, 3) relying on any documents that Ricoh failed to properly identify and/or disclose pursuant to Patent L.R. 3-2 when in served its original Infringement Contentions on March 5, 2004.

1 This motion is based on the following memorandum of points and authorities, the  
 2 accompanying declaration of Erik K. Moller and exhibits in support thereof, the oral arguments of  
 3 counsel at the hearing on this motion, and all other pleadings in this action.

## 4 5 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

### 6 **I. STATEMENT OF THE ISSUES**

- 7 1. Whether Ricoh's Patent Local Rule 3-1 Infringement Contentions separately designate  
 8 for each Defendant each '432 patent claim allegedly infringed?
- 9 2. Whether Ricoh's Infringement Contentions, separately for each '432 patent claim  
 10 asserted, identify each product which, when used by each Defendant, allegedly results in  
 11 the practice of that claim?
- 12 3. Whether Ricoh's Infringement Contentions provide an infringement chart for each  
 13 product which, when used by each Defendant, allegedly results in the practice of each  
 14 '432 patent claim asserted?
- 15 4. Whether Ricoh's Infringement Contentions identify specifically how each Synopsys  
 16 product, when used by each Defendant, allegedly meets each element of each '432  
 17 patent claim asserted?
- 18 5. Whether Ricoh is properly precluded from relying on, for any purpose, the assertion that  
 19 its own product(s) practices the '432 patent's claimed invention?
- 20 6. Whether Ricoh is properly precluded from relying on documents evidencing the  
 21 conception, reduction to practice, design, and development of the '432 patent's claimed  
 22 invention created on or before its application date?

### 23 **II. STATEMENT OF THE RELEVANT FACTS**

24 Ricoh was not required to serve its Disclosures of Asserted Claims and Preliminary  
 25 Infringement Contentions pursuant to Patent Local Rule 3-1 ("Infringement Contentions") until 10  
 26 days after the initial case management conference, which has yet to occur. On March 5, 2004, Ricoh  
 27  
 28

1 decided to serve its infringement contentions on the Defendants. (Exs. A, B, C, D).<sup>1</sup> Ricoh has done  
 2 this in an effort to trigger the timeline provided for in the Patent Local Rules. Based on this timeline,  
 3 the Defendants' Preliminary Invalidity Contentions are now due no later than 45 days after Ricoh's  
 4 service of its infringement contentions. See Patent L.R. 3-3. While Synopsys does not object to  
 5 moving forward with disclosures required by this District's Patent Local Rules, Ricoh's Infringement  
 6 Contentions are entirely inadequate and fail to comply with the Patent Local Rules.

7 A few days after the Defendants received Ricoh's Infringement Contentions, they sent Ricoh a  
 8 letter notifying Ricoh of their numerous deficiencies. (Ex. E). These deficiencies included:

- 9 • Ricoh's failure to identify the claims of the '432 patent allegedly infringed by each  
 10 Defendant, pursuant to Patent Local Rule 3-1(a).
- 11 • Ricoh's failure to adequately identify the Accused Instrumentalities for each Defendant,  
 12 pursuant to Patent Local Rule 3-1(b).
- 13 • Ricoh's failure to provide separate disclosures for each Accused Instrumentality and  
 14 each Defendant, pursuant to Patent Local Rule 3-1(c).
- 15 • Ricoh's failure to properly identify where each claim element of each claim asserted  
 16 against each Defendant was found in each Accused Instrumentality, pursuant to Patent  
 17 Local Rule 3-1(c).
- 18 • Ricoh's failure to indicate whether each claim element of each claim asserted against  
 19 each Defendant was found in each Accused Instrumentality, literally or under the  
 20 doctrine of equivalents, pursuant to Patent Local Rule 3-1(d).

21 (*Id.*).

22 In that same letter, Defendants also pointed out that Ricoh had waived certain rights by failing  
 23 to make any disclosure pursuant to Patent Local Rule 3-1(f) and by also failing to identify categories of  
 24 documents pursuant to Patent Local Rule 3-2. (*Id.*).

25 On March 12, 2004, without seeking the court order required for modifying its contentions  
 26 under Patent Local Rule 3-7, Ricoh responded by filing "revised" charts. (Exs. F, G, H, I, J, K, L).  
 27 With respect to the various Matrox entities accused of infringement ("Matrox Defendants"), Ricoh  
 28

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<sup>1</sup> All references to Exhibits refer to exhibits attached to the Declaration of Erik K. Moller in Support of Defendants' Motion to Strike Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions.

1 served multiple copies of the same chart it had previously provided for these Defendants as a group.<sup>2</sup>  
2 (Exs. I, J, K, L). In the letter accompanying these revised charts, Ricoh for the first time provided a  
3 disclosure under subsection (f) (although still failing to comply with its requirements) and an  
4 identification of documents under Patent Local Rule 3-2. (Ex. F).

5       Aside from providing multiple copies of essentially the same chart and these first-time  
6 disclosures under subsection (f) and Patent L.R. 3-2, Ricoh's revised charts added little, if any,  
7 substance and certainly did nothing more to address the inadequacies of Ricoh's original contentions.  
8 A few days later, the Defendants sent Ricoh a second letter pointing out that Ricoh was not entitled to  
9 unilaterally amend its contentions and that its revised contentions still failed to comply with the  
10 requirements of Patent Local Rule 3-1. (Ex. M).

11       On March 17, 2004 the parties met and conferred in an effort to resolve the present dispute.  
12 Ricoh maintained that both its original and its revised charts complied with Patent Local Rule 3-1's  
13 requirements. During that meet and confer, Ricoh did not offer to amend its infringement contentions  
14 to address any of the inadequacies set forth in the Defendants letters of March 8, 10, 12, or 16. (Exs.  
15 E, M, N, O). Ricoh subsequently sent a letter responding to the Defendants' March 16 letter  
16 confirming that Ricoh believed its original and revised contentions complied with the Patent Local  
17 Rules. Again, Ricoh did not offer to further amend its contentions. (Ex. P). After the March 24, 2004  
18 hearing before Magistrate Judge Chen, Ricoh's counsel again confirmed that Ricoh was not willing to  
19 amend its contentions.

20       While the Defendants are amenable to speeding-up the timetable in the Patent Local Rules,  
21 Ricoh should not be permitted to do so by serving *inadequate* Infringement Contentions that fail to  
22 comply with Patent Local Rule 3-1. Consequently, Ricoh's infringement contentions should be  
23 stricken and the Defendants' obligation to respond to Ricoh's discovery should be stayed until Ricoh  
24 complies with Patent Local Rule 3-1.

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27 <sup>2</sup> Ricoh continued to combine separate Aeroflex entities into a single chart, simply replacing "Aeroflex  
28 UTMC" with "Aeroflex Colorado Springs, Inc."

### III. INTRODUCTION AND SUMMARY OF ARGUMENT

The Patent Local Rules streamline the litigation process. Patent Local Rule 3-1 imparts a series of requirements on the plaintiff early in the litigation. These requirements force the plaintiff to articulate the specific theories for its patent infringement claims. Except under decidedly limited circumstances, once disclosed, the plaintiff must adhere to those theories for the remainder of the litigation. This prevents plaintiffs—like Ricoh—from engaging in a “shifting sands” approach to claim construction.

Ricoh refuses to comply with the requirements of Patent Local Rule 3-1. Ricoh does not wish to disclose its infringement theories or adhere to them. Ricoh prefers to maintain the ability to change its theories to suit its needs as the litigation progresses. With this strategy, Ricoh hopes to argue that the claims mean one thing when it asserts that they are valid over the prior art and another when it asserts that the Defendants infringe those same claims. This “shifting sands” approach to claim construction is exactly what the Patent Local Rules were designed to prevent.

Patent Local Rule 3-1 requires a plaintiff claiming patent infringement to disclose specific information in a specific way. First, the plaintiff must designate each claim that is allegedly infringed by each defendant. *See* Patent L.R. 3-1(a). Next, the plaintiff must identify each instrumentality accused of infringement (“Accused Instrumentality”) separately for each claim designated pursuant to subsection (a). *See* Patent L.R. 3-1(b). The plaintiff must then set forth in a chart where each element of each designated claim is found for each Accused Instrumentality identified in subsection (b), and state whether each element is infringed literally or under the doctrine of equivalents for each Accused Instrumentality. *See* Patent L.R. 3-1(c), (d).

Ricoh’s Infringement Contentions do not comply with any of these requirements. They do not explicitly and unambiguously set forth either the claims allegedly infringed by each of the Defendants or the products which, when used by the Defendants, allegedly practice the process of any allegedly infringed claims. To the extent Ricoh arguably identifies any accused products, Ricoh attempts to make such identifications ambiguous to avoid its obligation to provide a chart for each such accused product. In the chart that Ricoh actually does provide for each of the Defendants, it fails to adequately explain how each element of the ‘432 patent claims are met. In most instances, there is little or no



1 explanation of how the description Ricoh provides in its charts maps onto the claim language. Simply  
2 stated, Ricoh's contentions are crafted to avoid revealing its infringement theories, and seek to thwart  
3 the very purpose of the Patent Local Rules.

4 The Court should not condone Ricoh's disregard for the letter and the spirit of the Patent Local  
5 Rules. Ricoh's refusal to meet its obligations under these rules warrants at least an order precluding  
6 Ricoh from pursuing infringement theories not adequately disclosed in its original contentions if not a  
7 dismissal of its patent infringement claims against the Defendants altogether.

8 Patent Local Rule 3-1 also requires a plaintiff to make a reasonable inquiry into the applicable  
9 facts and law before serving a disclosure under that rule. At a minimum, a plaintiff's infringement  
10 contentions must provide the facts it obtained in its pre-filing inquiry. Because of this, a plaintiff's  
11 infringement contentions provide an accurate picture of the maximum possible pre-filing investigation  
12 it has conducted.

13 The picture of Ricoh's pre-filing investigation painted by its contentions is bleak. Ricoh's  
14 contentions show that it has not conducted a proper pre-filing investigation. They fail to set forth facts  
15 demonstrating that Ricoh conducted the reverse engineering (or its equivalent) required for a proper  
16 pre-filing investigation. Ricoh's contentions will ultimately support claims for attorneys' fees and/or  
17 sanctions by the Defendants in the present action.

#### 18 IV. ARGUMENT

##### 19 A. The Patent Local Rules Are Designed To Prevent The Shifting Sands 20 Approach To Patent Litigation

21 The purpose of this District's Patent Local Rules is simple: "they are designed [to] make the  
22 parties more efficient, to streamline the litigation process, and to articulate *with specificity* the claims  
23 and theory of a plaintiff's infringement claims." *Intertrust Techs. Corp. v. Microsoft Corp.*, 2003 U.S.  
24 Dist. LEXIS 22736, at \*6 (N.D. Cal. Dec. 1, 2003) (emphasis added). The requirements of the Rules  
25 are therefore prophylactic, preventing a party from engaging in the "shifting sands" approach to patent  
26 litigation. *See Atmel Corp. v. Information Storage Sys., Inc.*, 1998 U.S. Dist. LEXIS 17564, at \*7  
27 (N.D. Cal. Nov. 5, 1998) ("Unlike the liberal policy of amending pleadings, the philosophy behind  
28

1 amending claim charts is decidedly conservative and designed to prevent the ‘shifting sands’ approach  
2 to claim construction.”).

3  
4 **B. Ricoh’s Contentions Fail To Designate Each Claim Allegedly Infringed Separately For Each Defendant**

5 Patent Local Rule 3-1 requires a party alleging infringement to show “[e]ach claim of each  
6 patent in suit that is allegedly infringed *by each opposing party*.” Patent L.R. 3-1(a) (emphasis added).  
7 The information must be provided in Preliminary Infringement Contentions made “[s]eparately for  
8 each party.” Patent L.R. 3-1. The Rule requires by its terms that Ricoh submit separate Preliminary  
9 Infringement Contentions for each defendant.

10 Ricoh failed to do so here. Ricoh combined separate infringement contentions for multiple  
11 companies into a single disclosure. In one disclosure, Ricoh described infringement by “Aeroflex,”  
12 and defined “Aeroflex” to mean “*any one or more* of the following: Aeroflex, Inc. and Aeroflex  
13 UPMC.” (Ex. B at footnote 1). In another disclosure, Ricoh similarly combined Matrox Graphics,  
14 Inc., Matrox Electronic Systems, Inc., Matrox International Corp., and Matrox Tech, Inc. into a  
15 collective “Matrox.” (Ex. D at footnote 1).

16 The open-ended language of Ricoh’s disclosure (“any one or more”) forces the defendants to  
17 guess which entity is being accused of infringement and how its activities are allegedly infringing.<sup>3</sup>  
18 Ricoh is thereby attempting to avoid crystallizing its theory of the case, in contravention of the Patent  
19 Local Rules. *See Atmel*, 1998 U.S. Dist. LEXIS 17564, at \*7 (“The rules are designed to require  
20 parties to crystallize their theories of the case early in the litigation and adhere to those theories once  
21 they have been disclosed.”).

22 After the Defendants pointed out these deficiencies, Ricoh served “revised” charts, but did so  
23 without obtaining the required court order. *See* Patent L.R. 3-7 (“Amendment or modification of the  
24 Preliminary or Final Infringement Contentions . . . may be made only by order of the Court, which  
25

26 <sup>3</sup> On a related note, Ricoh’s use of the open-ended “*e.g.*” in citing to documents is inappropriate.  
27 Patent Local Rule 3-1 requires Ricoh to disclose all relevant facts it has that support its allegations.  
28 *See Network Caching Tech., LLC v. Novell, Inc.*, 2002 U.S. Dist. LEXIS 26098, at \*12 (N.D. Cal Aug.  
13, 2002). Ricoh is not free to include at its convenience only a selected subset of supporting facts.

1 shall be entered only upon a showing of good cause.”). To address this particular issue, Ricoh simply  
 2 served four copies of essentially the same chart originally done for the four separate Matrox  
 3 Defendants. (Exs. I, J, K, L).

4 But Ricoh is still not in compliance with Patent Local Rule 3-1(a). Ricoh insists on including  
 5 essentially the same footnote in each of the Matrox Defendants’ charts:

6 Matrox Electronic Systems, Ltd. alone, and/or in conjunction with (or  
 7 otherwise with the assistance of) any one or more of Matrox Graphics,  
 8 Inc., Matrox International Corp., Matrox Tech, Inc. and/or agents or  
 9 independent contractors of Matrox Graphics, Inc., Matrox Electronic  
 Systems, Ltd., Matrox International Corp., Matrox Tech, Inc., performs  
 each of the claimed steps set forth in this chart.

10 (*See, e.g.,* Ex. I at footnote 1).

11 The above-quoted language demonstrates that Ricoh is still attempting to avoid explicitly  
 12 designating the claims allegedly infringed by each of the Matrox Defendants. The problem is that  
 13 Ricoh has no basis for alleging that each of the four separate Matrox Defendants uses Synopsys’  
 14 software products in the United States.

15 Ricoh seeks to avoid complying with this simple requirement because only Matrox  
 16 International and Matrox Tech are present in the United States, and Matrox International does not do  
 17 any computer-aided design work. *See* Ex. Q at 7:21-7:24, 96:20-96:22, 160:5-162:24. Ricoh’s  
 18 counsel is apparently hesitant to make the certification required under Patent Local Rule 2-3 for  
 19 contentions against all four of these Matrox Defendants, without using the language quoted above.

20 Patent Local Rule 3-1 requires Ricoh to explicitly state for each of the six defendants the claims  
 21 that it alleges are infringed by each. *See* Patent L.R. 3-1(a). Ricoh has failed to comply with the  
 22 Patent Local Rules in either its original or its “revised” charts. Ricoh should not be allowed to skirt  
 23 this issue. Absent a showing of good cause to justify amendment, Ricoh should be precluded from  
 24 pursuing claims against any Defendant for which it has failed to comply with this requirement in its  
 25 original Infringement Contentions served on March 5, 2004.

26 **C. Ricoh Does Not Properly Identify The Products Which When Used Allegedly**  
 27 **Results In The Practice Of The Claims**  
 28

1 Separately for each claim, Ricoh must identify any product which, when used by Defendants  
 2 allegedly results in the practice of that claim. *See* Patent L.R. 3-1(b). This subsection also makes clear  
 3 that Ricoh's "identification shall be as specific as possible." *Id.* Neither Ricoh's original nor its  
 4 "revised" charts comply with this requirement.

5 Patent Local Rule 3-1(b) is designed to force a plaintiff to identify the Accused  
 6 Instrumentalities early in the litigation. Here, the Accused Instrumentalities are those Synopsys  
 7 software products which, when used by one of the Defendants, allegedly results in the practice of one  
 8 of the '432 patent's claimed computer-aided design processes. *See* Patent L.R. 3-1(b).

9 The identification required by Patent Local Rule 3-1(b) is also meant to be final. *See* Patent  
 10 L.R. 3-6 ("Each party's 'Preliminary Infringement Contentions' . . . shall be deemed to be that party's  
 11 final contentions []." ). A plaintiff is permitted to add accused products only by "order of the court,  
 12 which shall be entered only upon a showing of good cause." Patent L.R. 3-7.

13 Aware that adding accused software products would be difficult, Ricoh crafted its contentions  
 14 ambiguously, to avoid identifying the specific software products it believes result in the practice of its  
 15 claimed processes. For example, Ricoh's contentions use phrases that do not identify particular  
 16 software products—e.g., "Design Compiler Family", "HDL Compiler Family", and "Synopsys Design  
 17 Tools." Ricoh loosely defines these phrases in footnotes to encompass numerous listed and unlisted  
 18 Synopsys software products;<sup>4</sup>

19 "As used herein, "Design Compiler Family" shall refer to (without limitation): Design  
 20 Compiler (or any variation thereof, including DC Ultra, DC Expert, DC Expert Plus,  
 21 etc.), Module Compiler, Power Compiler, DFT Compiler, Prime Time, PrimePower, and  
 22 Formality."

23 (See, e.g., Ex. G at footnote 2).

24 "As used herein, "HDL Compiler Family" shall refer to (without limitation): VHDL  
 25 Compiler, HDL Compiler for Verilog, etc."

26 (See, e.g., Ex. G at footnote 3).

27 "Other components or products that may be used in conjunction with (or incorporate one  
 28 or more portions of) the Synopsys Design Tools, such as Design Compiler Family, HDL

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<sup>4</sup> For some of the listed products in these footnotes, even Ricoh admits that it has no basis for believing that the particular Defendant is using them. (See, e.g. Ex. G at footnote 5).

1 Compiler family, include (but are not limited to): CoCentric SystemC Compiler, Module  
 2 Compiler, Behavioral Compiler, Physical Compiler, Design Analyzer, DesignWare IP  
 3 Family, Chip Architect, Astro, Astro-Rail, Astro-Xtalk, and Encore. For example  
 4 Physical Compiler incorporates Synopsys' Design Compiler as an essential part."

5 (See, e.g., Ex. G at footnote 4).

6 "AMIS currently licenses and is believed to use at least the following tools: Prime Time,  
 7 DC Expert, DC Ultra, Design Analyzer, HDL Compiler Verilog, VHDL Compiler,  
 8 Physical Compiler, DFT Compiler, Astro, Astro Rail, Astro Xtalk, DesignWare, and  
 9 PrimePower. Additional Synopsys Design Tool Components which may be used by  
 10 AMIS include at least: DC Expert Plus, Power Compiler, Formality, and Encore. As  
 11 discovery is on-going in this action, Ricoh reserves the right to supplement this  
 12 preliminary infringement chart to add an infringement analysis with respect to one or  
 13 more of such additional Synopsys Design Tool Components."

14 (See, e.g., Ex. G at footnote 5).

15 By loosely defining these phrases, Ricoh not only burdens Defendants by requiring them to  
 16 guess what the Accused Instrumentalities are in this litigation, but it has also attempted to avoid the  
 17 difficulties of adding Accused Instrumentalities later in the litigation.

18 Patent Local Rule 3-1(b) unquestionably entitles each Defendant to an unambiguous  
 19 identification of the accused software products which, when used by them, allegedly result in the  
 20 practice of each of the '432 patent's process claims. The Court should not condone Ricoh's efforts to  
 21 avoid this requirement.

22 **D. Ricoh Does Not Provide An Infringement Chart For Each Product Which  
 23 When Used Allegedly Results In The Practice Of The Claims**

24 Ricoh uses the phrases "Design Compiler Family", "HDL Compiler Family", and "Synopsys  
 25 Design Tools" in an attempt to avoid the requirements of Patent Local Rule 3-1(c) as well. Subsection  
 26 (c) of Patent Local Rule 3-1 requires an infringement chart for each Accused Instrumentality identified  
 27 pursuant to subsection (b) of that rule.

28 Ricoh wishes to have the flexibility to claim that the numerous listed and unlisted products are  
 Accused Instrumentalities, but, at the same time, avoid providing the chart required by Patent Local  
 Rule 3-1(c) separately for each of them. (See, e.g., Ex. G at footnotes 2-5). The Court should not  
 allow Ricoh to have it both ways.

Ricoh is required to provide a chart separately for each Accused Instrumentality, or be  
 precluded from pursuing infringement of that Accused Instrumentality in the present litigation. See

1 *Hewlett-Packard Co. v. EMC Corp.*, 2003 U.S. Dist. LEXIS 22742, at \*3 (N.D. Cal. July 3, 2003)  
2 (“The disclosure must address each product (or other accused instrumentality) separately.”). Absent a  
3 showing of good cause for an amendment, the Court should preclude Ricoh from pursuing any  
4 infringement claims based on the Defendants use of products for which it has failed to provide a proper  
5 Patent Local Rule 3-1(c) chart.

6  
7 **E. Ricoh’s Infringement Chart Does Not Explain How Each Product Allegedly  
Meets Each Element For Each Asserted ‘432 Patent Claim**

8 Patent Local Rule 3-1(c) also requires a chart identifying specifically where each element of  
9 each allegedly infringed claim is found within each accused software product. *See* Patent L.R. 3-1(c).  
10 To comply, Ricoh must explain how the Defendants’ use of each Synopsys product meets each  
11 element of each asserted ‘432 patent claim. *See Intertrust*, 2003 U.S. Dist. LEXIS 22736, at \*7  
12 (“Local Rule 3-1(c) requires that a plaintiff explain how each allegedly infringing product meets each  
13 element of the plaintiff’s asserted patent claim.”).

14 Ricoh cannot simply mimic the claim language to fulfill its obligations. *See Network Caching*,  
15 2002 U.S. Dist. LEXIS 26098, at \*17-18 (“In essence, [plaintiff] has provided no further information  
16 to defendants than the claim language itself. This is plainly insufficient.”). This subsection requires a  
17 plaintiff to specifically link or map descriptions of the accused product onto the corresponding claim  
18 language for each element of each claim. *Id.*

19 One example of Ricoh’s failure to comply with Patent Local Rule 3-1(c) relates to the  
20 following two elements in claim 13: 1) “storing in an expert system knowledge base a set of rules for  
21 selecting hardware cells”; and 2) “applying to the specified definition of the action or condition to be  
22 performed, a set of cell selection rules stored in said expert system knowledge base.” (*See, e.g., Ex. G*  
23 *at pp. 7, 10*). These elements are important to the infringement questions raised by the present action  
24 since Synopsys’ Design Compiler software products used by the Defendants do not have or use “cell  
25 selection rules” or an “expert system knowledge base.”

26 Besides the explicit claim language used in these two elements, the ‘432 patent and its file  
27 history also demonstrate that Ricoh’s claimed invention in the ‘432 patent is limited to using “cell  
28 selection rules stored in said expert system knowledge base” as opposed to using “conventional”



1 computing algorithms. (*See, e.g.*, Ex. S at 10:1-6). During the application process for the '432 patent  
 2 (*i.e.*, the file history), Ricoh repeatedly argued and emphasized that the use of "cell selection rules" in  
 3 an "expert system knowledge base" for "translating a flowchart into a netlist" patentably distinguished  
 4 its alleged invention over conventional computing algorithms used by the prior art relied on by the  
 5 examiner. (*See, e.g.*, Exs. T and U at 7).

6 Not surprisingly, other than improperly paraphrasing the claim language for these two  
 7 elements, Ricoh failed to provide any description in its original contentions corresponding to them.  
 8 Ricoh also failed to explain how any of Synopsys' software products used by the Defendants meet  
 9 these two elements.

10 Ricoh's revised contentions are no better.<sup>5</sup> Ricoh appears to rely on the description in a fifteen-  
 11 year-old publication, which apparently describes a 1989 version of Design Compiler. (Ex. R).  
 12 Because Ricoh has not and cannot claim that any of the Defendants are using this 1989 version of that  
 13 software product, Ricoh's reliance on that document is completely misplaced.<sup>6</sup> Even putting aside the  
 14 unreasonableness of relying on this outdated publication, Ricoh does not explain how the description  
 15 in that publication maps or links onto the language for these two elements. Ricoh's revised  
 16 contentions for these two elements, therefore, remain inadequate under Patent Local Rule 3-1(c).

17 These two elements represent just one example of the inadequacy of Ricoh's contentions under  
 18 Patent Local Rule 3-1(c). The Defendants have set forth in Attachments 1-3 a copy of Ricoh's  
 19 "revised" charts with an additional column.<sup>7</sup> In that column, the Defendants point to the other  
 20 numerous inadequacies in each of the Infringement Contentions provided by Ricoh. These contentions

21  
 22  
 23 <sup>5</sup> After the Defendants informed Ricoh of these inadequacies, Ricoh served revised contentions  
 24 without the court order required by Patent Local Rule 3-7. (Ex. F). Ricoh's revised contentions should  
 not be allowed, absent its making the good cause showing required by the rules. Patent L.R. 3-7.

25 <sup>6</sup> In fact, Ricoh completely fails to identify the version of the products which, when used by the  
 Defendants, result in the alleged infringement of the '432 patent's claimed processes, pursuant to  
 Patent Local Rule 3-1(b).

26 <sup>7</sup> Ricoh's "revised" charts relating to Matrox Graphics, Inc., Matrox International Corp., and Matrox  
 27 Tech, Inc. are identical to the chart for Matrox Electronic Systems, Ltd. Therefore, the analysis in  
 Attachment 3 of Ricoh's Infringement Contentions with respect to Matrox Electronic Systems, Ltd.  
 28 should be considered as applying to the "revised" charts for all Matrox Defendants.

1 show that Ricoh has chosen to ignore the requirements of the Patent Local Rules. Ricoh should not be  
2 allowed to pursue its infringement claims against the use of any products for which it has failed to  
3 comply with Patent Local Rule 3-1(c). Ricoh's contentions should be stricken.

4  
5 **F. Ricoh's Infringement Charts Demonstrate That It Has Not Done A Proper  
Pre-filing Investigation**

6 The descriptions of the accused products in Ricoh's charts also demonstrate that it has not done  
7 a proper investigation either before filing the instant litigation or prior to serving its infringement  
8 contentions. In either case, a proper investigation requires doing reverse engineering or its equivalent  
9 for each of the Accused Instrumentalities. *See Network Caching*, 2002 U.S. Dist. LEXIS 26098, at \*16  
10 ("While the court is reluctant to hold that in all cases such a requirement requires reverse engineering  
11 of the defendant's products, the court finds that reverse engineering or its equivalent is required.").  
12 Ricoh certainly has not done such an investigation here.

13 Patent Local Rule 3-1 requires a plaintiff to make a reasonable inquiry into the applicable facts  
14 and law before serving its Preliminary Infringement Contentions. *See id.* at \*13. Because Ricoh's  
15 Infringement Contentions, at a minimum, must provide the facts it obtained in its pre-filing inquiry, its  
16 infringement charts represent the maximum possible pre-filing investigation conducted by Ricoh. *See*  
17 *id.* at \*12.

18 As demonstrated for the two elements above and in Attachments 1-3 for the remainder of the  
19 claim elements, Ricoh does not map a description of the Accused Instrumentalities to the claim  
20 elements. This lack of explanation and supporting description for how the Defendants' use of the  
21 Synopsys products meet the claim elements demonstrates that Ricoh has not done a proper pre-filing  
22 investigation. After the Defendants ultimately prevail in the instant litigation, these contentions will  
23 certainly support their claims for attorneys' fees and/or sanctions.

24 **G. Ricoh has Failed To Designate Whether Each Element For Each Allegedly  
25 Infringed Claim Is Present Literally Or Under The Doctrine Of Equivalents  
For Each Accused Instrumentality**

26 The Patent Local Rules require a plaintiff to designate for each Accused Instrumentality  
27 whether each element for each allegedly infringed claim is present literally or under the doctrine of  
28 equivalents. *See* Patent L.R. 3-1(d). Therefore, Ricoh must disclose whether each claim element is



1 infringed literally or under the doctrine of equivalents, for each Synopsys software product which,  
2 when used by the particular Defendant, allegedly infringes the '432 patent claims. *See* Patent L.R. 3-  
3 1(b).

4 Ricoh chose not to provide a chart for each Accused Instrumentality and actually refuses to do  
5 so. (Ex. P). Ricoh's refusal, by itself, warrants precluding it from pursuing its infringement claim  
6 against the use of any software products for which it has refused to comply with Patent Local Rule 3-  
7 1(d).

8  
9 **H. Ricoh Is Properly Precluded From Relying On Any Of Its Own Products  
Allegedly Practicing The '432 Patent Claims**

10 Ricoh was required to comply with Patent Local Rule 3-1(f) to preserve its ability to rely on  
11 products allegedly practicing the claimed invention for any purpose in this litigation. *See* Patent L.R.  
12 3-1(f). Subsection (f) required Ricoh to, separately for each claim, identify any instrumentality that  
13 reflects or incorporates that particular claim. *Id.*

14 Ricoh's original infringement contentions did not make any disclosure under this subsection.  
15 Because of this, Ricoh should be precluded from relying on any such instrumentalities in this litigation,  
16 absent the showing of good cause necessary for amending its contentions. *See* Patent L.R. 3-7.

17 After the Defendants pointed out to Ricoh that it had waived its right to rely on any  
18 instrumentalities under subsection (f), Ricoh served "revised" charts without the necessary court order  
19 or even an explanation of why there was good cause for such charts. The letter accompanying those  
20 charts purported to disclose instrumentalities pursuant to this subsection. (Ex. F). Ricoh's letter does  
21 not satisfy its obligation. Ricoh still failed to identify instrumentalities "separately for each claim" as  
22 required by subsection (f).

23 Ricoh's disregard for this subsection should not be excused. The Defendants should not be  
24 burdened with the expense of reviewing repeated attempts by Ricoh to provide as little information  
25 about its positions as possible. The requirements of this subsection are clear. Ricoh chose to ignore  
26 them. Ricoh should be precluded from relying on any instrumentalities that it was required to disclose  
27 pursuant to Patent Local Rule 3-1(f) in its original contentions.

28

**I. Ricoh Is Properly Precluded From Relying On Documents Evidencing An Earlier Invention For The '432 Patent's Claims**

Similarly, Ricoh should also be precluded from relying on the documents evidencing earlier conception and reduction to practice that it failed to timely identify pursuant to Patent Local Rule 3-2. This rule required Ricoh to identify any documents evidencing prior invention (e.g., conception and reduction to practice) by document production numbers at the same time it served its infringement contentions. *See* Patent L.R. 3-2. Ricoh again chose not to do so.

After the Defendants pointed out Ricoh's failure to identify these documents, Ricoh attempted to identify them in the letter accompanying its improperly served revised contentions. Ricoh's disregard for these requirements should not be ignored. Ricoh should be precluded from relying on these belatedly identified documents in the present litigation. Otherwise, Ricoh will just continue to disregard its obligations under these Patent Local Rules.

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///

1 **V. CONCLUSION**

2 For the foregoing reasons, the Defendants' motion to strike Ricoh's Preliminary Infringement  
3 Contentions should be granted.

4  
5 Dated: March 30, 2004

Respectfully submitted,

6 HOWREY SIMON ARNOLD & WHITE, LLP

7  
8 By: /s/ Thomas C. Mavrakakis

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13 ELECTRONIC SYSTEMS LTD.,  
14 MATROX GRAPHICS INC., MATROX  
15 INTERNATIONAL CORP., and  
16 MATROX TECH, INC.  
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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 RICOH COMPANY, LTD.,

13 Plaintiffs,

14 v.

15 AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
16 ELECTRONIC SYSTEMS, LTD., MATROX  
GRAPHICS, INC., MATROX  
17 INTERNATIONAL CORP., and MATROX  
TECH, INC.,

18 Defendants.  
19

) Case No. CV 03-04669 MJJ(EMC)

) **MANUAL FILING NOTIFICATION**

) **RE ATTACHMENT 1 TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **DISCLOSURE OF ASSERTED CLAIMS**  
) **AND PRELIMINARY INFRINGEMENT**  
) **CONTENTIONS**

**MANUAL FILING NOTIFICATION**

Regarding: *Attachment 1 to Defendants' Motion To Strike Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions.*

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

If you are a participant in this case, this filing will be served in hard-copy shortly.

For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

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☒ Item Under Seal

☐ Conformance with the Judicial Conference Privacy Policy (General Order 53).

☐ Other (description): \_\_\_\_\_

Dated: March 30, 2004

Respectfully submitted,

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 RICOH COMPANY, LTD.,

13 Plaintiffs,

14 v.

15 AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
16 ELECTRONIC SYSTEMS, LTD., MATROX  
GRAPHICS, INC., MATROX  
17 INTERNATIONAL CORP., and MATROX  
TECH, INC.,

18 Defendants.  
19

) Case No. CV 03-04669 MJJ(EMC)

) **MANUAL FILING NOTIFICATION**

) **RE ATTACHMENT 2 TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **DISCLOSURE OF ASSERTED CLAIMS**  
) **AND PRELIMINARY INFRINGEMENT**  
) **CONTENTIONS**

**MANUAL FILING NOTIFICATION**

Regarding: *Attachment 2 to Defendants' Motion To Strike Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions.*

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

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☒ Item Under Seal

☐ Conformance with the Judicial Conference Privacy Policy (General Order 53).

☐ Other (description): \_\_\_\_\_

Dated: March 30, 2004

Respectfully submitted,

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8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 RICOH COMPANY, LTD.,

13 Plaintiffs,

14 v.

15 AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
16 ELECTRONIC SYSTEMS, LTD., MATROX  
GRAPHICS, INC., MATROX  
17 INTERNATIONAL CORP., and MATROX  
TECH, INC.,

18 Defendants.  
19

) Case No. CV 03-04669 MJJ(EMC)

) **MANUAL FILING NOTIFICATION**

) **RE ATTACHMENT 3 TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **DISCLOSURE OF ASSERTED CLAIMS**  
) **AND PRELIMINARY INFRINGEMENT**  
) **CONTENTIONS**



**MANUAL FILING NOTIFICATION**

Regarding: *Attachment 3 to Defendants' Motion To Strike Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions.*

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

If you are a participant in this case, this filing will be served in hard-copy shortly.

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☒ Item Under Seal

☐ Conformance with the Judicial Conference Privacy Policy (General Order 53).

☐ Other (description): \_\_\_\_\_

Dated: March 30, 2004

Respectfully submitted,

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INTERNATIONAL COPR. and  
MATROX TECH, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

vs.

AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
ELECTRONIC SYSTEMS, LTD., MATROX  
GRAPHICS INC., MATROX  
INTERNATIONAL CORP. and MATROX  
TECH, INC.,

Defendants.

) Case No. CV 03-04669 MJJ (EMC)

)

) **[PROPOSED] ORDER GRANTING**  
) **DEFENDANTS' MOTION TO STRIKE**

) **PLAINTIFF'S DISCLOSURE OF**  
) **ASSERTED CLAIMS AND PRELIMINARY**  
) **INFRINGEMENT CONTENTIONS**

) Date: May 4, 2004

) Time: 9:30 a.m.

) Ctrm: 11, 19th Floor

) Judge: Hon. Martin J. Jenkins

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1 This matter came before the Court on May 4, 2004 on motion by defendants Aeroflex, Inc.,  
2 AMI Semiconductor, Inc., Matrox Electronic Systems, Ltd., Matrox Graphics, Inc., Matrox  
3 International Corp., and Matrox Tech, Inc. (collectively "Defendants") seeking to strike plaintiff Ricoh  
4 Company Ltd.'s ("Ricoh") Disclosures of Asserted Claims and Preliminary Infringement Contentions  
5 for noncompliance with the Patent Local Rules.

6 After consideration of the papers filed in support of the motion, any papers filed in opposition,  
7 and any oral argument of counsel:

8 IT IS ORDERED, ADJUDGED AND DECREED that:

- 9 1. Ricoh's Disclosure of Asserted Claims and Preliminary Infringement Contentions  
10 ("Infringement Contentions"), served on March 12, 2004 allegedly pursuant to Patent  
11 Local Rule 3-1 shall be stricken;
- 12 2. Within 10 days of this Court's order, Ricoh shall file Amended Infringement Contentions  
13 that remedy the inadequacies identified by Defendants so that they comply with the  
14 requirements of Patent L.R. 3-1;
- 15 3. Ricoh will be required make the showing of good cause required under Patent L.R. 3-7  
16 for any amendments and/or modifications that the Court orders are required for  
17 remedying the inadequacies identified by Defendants and/or otherwise deemed by the  
18 Court as necessary for complying with Patent L.R. 3-1;
- 19 4. Ricoh's discovery from the Defendants shall be stayed until Ricoh files Amended  
20 Infringement Contentions that comply with the Court's Patent Local Rules; and
- 21 5. In the event that Ricoh does not or cannot make the required showing of good cause  
22 necessary for amending its Infringement Contentions to comply with any order by this  
23 Court, that the Court order that Ricoh be precluded from:
  - 24 a. pursuing its infringement claims against any Accused Instrumentalities as to which  
25 Ricoh failed to comply with Patent L.R. 3-1 in its original Infringement Contentions  
26 served on March 5, 2004;

- 1 b. relying on any other instrumentalities for any purpose in this litigation for which  
2 Ricoh failed to comply with Patent L.R. 3-1 in its original Infringement Contentions  
3 served on March 5, 2004; and,  
4 c. relying on any documents that Ricoh failed to properly identify and/or disclose  
5 pursuant to Patent L.R. 3-2 when in served its original Infringement Contentions on  
6 March 5, 2004.

7  
8 Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
The Honorable Martin J. Jenkins  
United States District Court Judge

9  
10  
11 Submitted March \_\_, 2004 by:  
12 HOWREY SIMON ARNOLD & WHITE, LLP

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